

B. W. H. asks the Appeals Board of the Utah Labor Commission to reconsider its prior determination that Utah Valley State College (“UVSC” hereafter) is entitled to summary dismissal of Mr. H.’s claim of age discrimination under the Utah Antidiscrimination Act (“the Act”; Title 34A, Chapter 5, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this matter pursuant to Utah Code Ann. §63-46b-13.

BACKGROUND AND ISSUES PRESENTED

Dr. H. and eighteen other candidates applied for a faculty position at UVSC. After an initial screening, Dr. H. was ranked as the 10th most qualified applicant. UVSC did not further consider Dr. H. for the position, but instead interviewed only the top seven candidates. Ultimately, UVSC offered the position to Dr. Peterson, age 46, who declined. UVSC then offered the position to Dr. Harris, age 32, who accepted.

Dr. H. filed a discrimination complaint alleging UVSC had discriminated against him on the basis of age. The Utah Antidiscrimination and Labor Division (“UALD”) investigated, but found no cause to believe that unlawful discrimination had occurred. Dr. H. appealed UALD’s determination to the Commission’s Adjudication Division, where the matter was assigned to Judge Poelman.

In the course of proceedings before Judge Poelman, UVSC was awarded expenses, including attorney fees, in the amount of \$887.20 arising from a discovery dispute with Dr. H.. Subsequently, Judge Poelman granted UVSC’s motion for summary dismissal of Dr. H.’s complaint on the grounds that, as a matter of law, undisputed facts prevented Dr. H. from prevailing on his complaint. On review, the Appeals Board affirmed Judge Poelman’s decision.

Dr. H. now asks the Appeals Board to review its previous decision. In support of his request for review, Dr. H. argues that various facts regarding his qualifications, as well as those of the candidates for employment who were selected for interviews, are in dispute. Dr. H. contends that these disputed questions of fact preclude summary judgment in this matter. With respect to the award of expenses to UVSC, Dr. H. argues that the award is unjust.

DISCUSSION

Summary Judgment. In its prior decision, the Appeals Board noted that Dr. H.’s complaint cannot be summarily dismissed if evidence has been presented that can be rationally viewed as discrediting the non-discriminatory explanation UVSC has proffered for not hiring Dr. H.. The Appeals Board also noted that, while the Utah Antidiscrimination Act prohibits invidious employment discrimination, it does not interfere with bona fide nondiscriminatory selection and management decisions. Consequently, “(a)n employer has the discretion to choose among candidates so long as the decision is not based on unlawful criteria. Although the employee, and even the judge, may believe that the employer *misjudged* the qualifications of the

applicants, that does not, without more, subject the employer to liability under the Act.” University of Utah v. Industrial Commission, 736 P.2d 630, 635 (Utah 1987).

In this case, UVSC has presented evidence of nondiscriminatory reasons ranking other candidates as more qualified than Dr. H.. Those factors are detailed in the Appeals Board’s prior decision. Having reviewed these factors once again, the Appeals Board concludes that the evidence cannot reasonably be viewed as creating a factual dispute regarding the basis for UVSC’s hiring decision. The Appeals Board recognizes that Dr. H. does not accept UVSC’s judgment, but Dr. H.’s own subjective opinion regarding his abilities and qualifications as a teacher does not preclude summary judgment. In other words, whether or not UVSC was successful in identifying the most qualified candidates, UVSC reached its decision on the basis of nondiscriminatory factors. The Appeals Board therefore concludes that summary judgment has properly been granted against Dr. H..

Award of expenses. Without providing any authority to support his arguments, Dr. H. insists that he should not be required to pay UVSC’s expenses, including attorneys fees, incurred in responding to Dr. H.’s motion to compel discovery. This issue has been fully addressed in the Appeals Board’s previous decision. For the reasons stated therein, the Appeals Board finds no reason to modify that portion of its decision.

ORDER

The Appeals Board reaffirms its prior decision in this matter and denies Dr. H.’s request for reconsideration. It is so ordered.

Dated this 27th day of February, 2004.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph Hatch